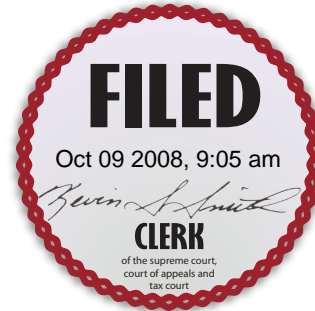


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ANNA E. ONAITIS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

APRIL K. FINCH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 28A05-0805-CR-261

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0708-FC-146

OCTOBER 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant April K. Finch (“Finch”) appeals from the trial court’s sentencing order after Finch pleaded guilty but mentally ill to criminal confinement, a Class C felony; and false informing, a Class A misdemeanor. Finch claims that her sentence is inappropriate in light of the nature of the offense and the character of the offender.

On June 6, 2007, Detective George Dallaire of the Greene County Sheriff’s Department was dispatched to Finch’s home after Finch reported that her child had been abducted. When Detective Dallaire arrived, the three-month-old infant had already been discovered lying on a comforter and wrapped in blankets in the trunk of Finch’s car. Finch and her child had already been transported to the hospital because the infant, when discovered, was “very hot and sweaty, red faced, [and] possibly dehydrated.” *Tr.* at 30. The infant’s clothes were soaked in sweat, she had a dirty diaper, and had vomited. The infant was in the trunk for approximately four to four and one half hours prior to being discovered.

As a result of this incident, the State initiated CHINS proceedings against Finch and her husband, who was the child’s adoptive father. The CHINS proceedings are not a part of this appeal. However, the State also charged Finch with neglect of a dependent, a Class C felony; criminal confinement, a Class C felony; and false informing, a Class A misdemeanor, which is the subject of this appeal. Finch filed a notice of defense of mental disease or defect and moved the court to appoint two or three psychiatrists to

examine her. The trial court granted the motion and appointed Dr. Matt Oliver and Dr. Greg Sidell to examine Finch.

Ultimately, Finch pleaded guilty but mentally ill to the criminal confinement and false informing charges pursuant to a written plea agreement with the State. The State agreed to dismiss the neglect of a dependent charge. The plea agreement left sentencing open on the criminal confinement conviction, but specified a 90-day sentence with credit for 45 actual days served on the false informing count.

The trial court held the change of plea hearing where a factual basis was established, and immediately proceeded to sentencing. The trial court sentenced Finch to six years executed with two years suspended to supervised probation for the criminal confinement conviction, and to a 90-day sentence with credit for 45 actual days served on the false informing count. The trial court ordered that the sentences be served concurrently pursuant to the terms of the plea agreement.

Finch claims that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. More specifically, Finch argues that the “nature of this offense is troubling but does not warrant a sentence in excess of the advisory.” *Appellant’s Br.* at 6. Ind. Code §35-50-2-6 provides that a person convicted of a Class C felony may be imprisoned for a term of between two and eight years. The advisory sentence for a Class C felony is four years. Ind. Code §35-50-2-6. Finch also emphasizes her long history of mental illness.

Ind. Appellate Rule 7(B) provides that "the court may revise a sentence ... if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the offense, Finch admits that her actions could have resulted in great harm to her child. *Appellant's Br.* at 13. However, Finch asks that this Court consider that her daughter was not permanently harmed, when contemplating her request for a revision in her sentence. In regard to concurrent or consecutive sentencing, that statute omits criminal confinement from the list of crimes defined as a "crime of violence." *See* Ind. Code §35-50-1-2(a). The criminal confinement statute covers situations that do not usually involve a high likelihood of death for the victim, even where there might be bodily injury or serious bodily injury. *See* Ind. Code §35-42-3-3. Here, a three-month-old infant was left in the trunk of a car for approximately four and one half hours on an evening where the temperature was in the mid-fifties. The sentence is not inappropriate in light of the nature of this offense.

With regard to the character of the offender, the trial court noted Finch's criminal history. This history was assigned little aggravating weight, but included two misdemeanor convictions for conversion, crimes involving a component of deception. The trial court considered the age of the victim, three-months old; the infant's condition when found; and that Finch was in a position of having the care, custody and control over

the infant. The trial court also noted the number of arrests and charges that had been filed against Finch, not in terms of considering her criminal history, but instead as an indication of a history of anti-social behavior on her part.

Concerning the character of the offender, the trial court noted that Finch had accepted responsibility for her actions and had entered into a plea agreement. Finch previously had been diagnosed with histrionic personality disorder, a disorder that is characterized as creating chaos in order to gain attention. *Tr.* at 48-49. When the trial court took into consideration Finch's mental health issues, the trial court considered four factors discussed by our Supreme Court in *Weeks v. State*, 697 N.E.2d 28, 30 (Ind. 1998), used to evaluate mental illness in terms of sentencing. The trial court used as sources of information to conduct that evaluation the pre-sentence investigation report, the trial court's own observations of Finch, the report provided by one of the psychiatrists, and information supplied by Finch.

The trial court found that it was very difficult to determine the extent of Finch's inability to control her behavior due to her mental disorder. The psychiatrist's information tended to lean in favor of finding this to be a significant mitigating factor. However, the trial court also expressed difficulty in reconciling that with Finch's behavior in court, and the videotape of Finch during her polygraph examination. In the videotape, Finch appeared to be calm, cool, collected, and in control. She also denied recollection of the offense. The polygraph machine indicated deception on Finch's part.

The trial court noted that logic would indicate that if a separate personality were involved in the commission of the offense, then it is unlikely that deception would be shown.

The trial court found Finch to be functioning fairly well. The trial court, in examining the nexus between the disorder and the commission of the offense, determined that the nexus was weakened by Finch's recollection of placing the child in the trunk, yet continued denial that she did it. The trial court found Finch's mental illness to be a mitigating factor, but assigned little weight to it. The trial court concluded by expressing his unease about a lack of appropriate concern about the seriousness of the offense. The character of the defendant suggests that this slightly enhanced sentence is appropriate.

The trial court did not err in sentencing Finch. The nature of the offense and the character of the offender suggest that the sentence is appropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.